IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16 .03.2007

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

C.M.A.Nos.138 and 175 of 2001

N.Nadanasapapathy ... Appellant in C.M.A.No.138/2001
Respondent in C.M.A.No.175/2001

vs.

The Managing Director,
Metropolitan Transport Corporation
(Chennai Dn.II) Ltd., ... Respondent in C.M.A.No.138/2001
Chennai. Appellant in C.M.A.No.175/2001

CT Accepted vide as per order
of Court dated 19.6.2001 made in
CMP.No.9063/01

Civil Miscellaneous Appeal filed under Section 173 Motor Vehicles Act, 1988 against the award and decree, dated 12.12.2000 made in M.A.C.T.O.P.No.1495 of 1997 on the file of the Motor Accidents Claims Tribunal, (IV Judge, Court of Small Causes), Chennai.

For Claimant : Mr.M.Swamikkannu

For Respondent : Mr.A.S.Ramachandran

J U D G M E N T

Aggrieved by the award dated 12.12.2000 made in M.A.C.T.O.P.No.1495 of 1997 on the file of the Motor Accidents Claims Tribunal, (IV Judge, Court of Small Causes), Chennai, both claimant and the Transport Corporation have preferred above appeals. For sake of convenience, the appellant is referred as claimant and the Transport Corporation is referred as respondent.

2. Brief facts leading to the appeal are as follows:

On 22.02.1996 about 8.05 a.m., a bus, owned by the appellant-Transport Corporation, stopped at Mulakuthalam and, the conductor instructed the passengers, standing near the front entrance, to get down to facilitate other passengers to alight from

the bus. When the claimant was about to board, the driver started the bus without noticing him. The claimant lost his balance, fell down and sustained injuries. He claimed compensation of Rs.11,00,000/-.

3. The Transport Corporation resisted the claim petition and contended that it is purely the fault of the claimant, who lost his balance and fell down by his own act. They further disputed the age, avocation, nature of injuries, period of treatment of the claimant etc.

4. Before the Tribunal, the claimant examined himself as P.W.1. PW.2 is the Doctor, who examined the claimant with reference to the medical records. Exs.P1 to P3 – Discharge summaries; Ex.P4 – Medical bills; Ex.P5 – Qualification certificate; Ex.P6 (series) – X-Ray and Ex.P7 – Disability certificate were marked on the side of the claimant. On behalf of the Transport Corporation, the driver and conductor of the bus were examined as RW.1 and RW.2 respectively. RW.3 is the Checking Inspector of the Transport Corporation and no document was marked.

5. On evaluation of the pleadings and evidence, the Tribunal found that the driver of the bus was responsible for the accident and awarded compensation of Rs.5,13,500/- with interest at the rate of 12% per annum from the date of claim till the date of realisation.

6. Heard Mr.M.Swamikkannu, learned counsel appearing for the claimant and Mr.A.S.Ramachandran, learned counsel for the respondent.

7. Learned counsel for the Transport Corporation submitted that the Tribunal has erred in holding that the driver of the bus was responsible for the accident. He further submitted that after alighting the passengers, the conductor gave the signal and when the driver started the bus, the claimant, who was travelling on the footboard lost his grip, fell down and sustained injuries. He further submitted that except the oral testimony of the claimant, no other supporting documents, such as, F.I.R., sketch etc., were marked to support the case of the claimant and therefore, the finding of the Tribunal with regard to negligence is erroneous.

8. PW.1 in his evidence, has deposed that he got down from the bus along with others as per the instructions of the conductor and before he could board the bus, the driver started the bus, due to which, he fell down and sustained grievous injuries. It is the case of the Transport Corporation that the claimant was a footboard passenger. If that be the case, it is the duty of the conductor to see whether all the passengers were boarded into the bus, before it was started. Once it is admitted by the Transport Corporation that

the claimant was standing on the footboard, the conductor ought to have verified whether the claimant has got into the bus before the bus started.

9. This Court in Venkataswami Motor Service v. C.K.Chinnaswamy [1989 ACJ 371], has held that the fundamental duty of both, the driver as well as the conductor, is to verify specifically whether any passenger is getting into the bus or getting down from the bus before actually the bus is moved from the bus stop where it is stopped, irrespective of the fact whether that place of stopping is a bus stop or not. Paragraph 21 reads as follows:

> "Before parting with this case, while confirming the Tribunal's findings, this Court to observe for guidance of the crew of the buses. The life and limb of the passengers are to be born in mind by the crew, namely the driver and the conductor of a bus. It is not for merely mechanically driving the bus and for collecting the fares from passengers that both of them are employed in a bus. The driver of the bus has to look into both the entrances, from exit as well as rear exit, before actually starting the vehicle, even though whistle might have been given by the conductor inadvertently without noticing both exits due to the pressure of collection of fares from the passengers or due to his noting in the memo as in the instant case before us. But the fundamental duty of both the driver as well as the conductor is to verify specifically whether any passenger is getting into the bus or getting down from the bus before actually the bus is moved from the bus stop where it is stopped irrespective of the act whether that place of stopping is a bus stop or nor....."

10. In a decision in N.K.V.Brothers (P) Ltd., v. M.Karumari Ammal [AIR 1980 SC 1354], it was held that Accident Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape from their liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable.

11. A Division Bench of this court in M. Jaganathan v. Pallavan Transport Corporation Ltd., etc., [1997 (1) LW 226], has held that the crew of the Transport Corporation bus is responsible when the passengers alight from the bus when it halts not at a stopping place. It is further held that duty cast on the crew is not letting the passengers to get hurt even if it is not a bus stop.

12. The view of the Division Bench was affirmed in yet another Division Bench of this Court reported in Metropolitan Transport Corporation (Chennai Div.I) Ltd v. K.Shankar [I (2002) ACC 488 (DB)], where the Court observed that,

> "In this connection we may observe that even assuming that the accident took place in the manner suggested by the driver of the bus, that will not have the effect of exonerating the driver and owner from the liability to pay compensation since it is well settled that a person attempting to alight from a moving bus as also a person trying to board a moving bus will nevertheless be a passenger for the purpose of awarding compensation in a road traffic accident..... It is further observed that the driver of the bus which carries passengers owes a duty for the safety of passengers and that while driving he must avoid acts of commissions which can reasonably be foreseen to injure them and in deciding what acts or omissions he should avoid, he must bear in mind the normal habits of passengers. The aforesaid decision of this Court has been confirmed by the Supreme Court in 2001 (1) CTC 49 wherein the Apex Court rejected the contention of the owner of the bus, finding negligence on the part of the driver."

13. In the instant case, RW.1 and RW.2, the driver and conductor of the bus have deposed that they have stopped the bus only after the alarm raised by other passengers. The evidence let in by the crew is also contrary to the pleadings. Therefore, it is evident that the crew has failed to see that all the passengers have boarded the bus. The judgments referred to above apply to the facts of this case, in so far as negligence is concerned. Production of F.I.R., sketch and other documents are only to corroborate the oral testimony of the claimant. In the claim petition, it is suffice, if there is preponderance of probability as to the manner of accident. The obligation of the claimant is discharged, the moment he places proper evidence to prove that there is prima facie. Therefore, I am of the considered opinion that the finding of the Tribunal cannot be termed as perverse. Therefore, it is confirmed.

14. As regards quantum of compensation, learned counsel for the Transport Corporation submitted that the award of Rs.2,00,000/- towards loss of earning power is without any basis and liable to be set aside. He further submitted that the award of Rs.1,25,000/- towards loss of future life and mental agony, inability to eat and do any work is unsustainable.

15. On the other hand, learned counsel for the claimant submitted that due to the injury, the claimant suffered 75% disability and that the award of Rs.5,13,500/- requires to be

enhanced, considering the nature of injuries, period of treatment.

16. Learned counsel for the Transport Corporation submitted that the award of Rs.1,00,000/- for medical expenses is excessive, inasmuch as the claimant had submitted bills only upto Rs.65,000/-. He also submitted that the disability assessed by the Doctor at 75% is also excessive.

17. PW.1, claimant has deposed that due to the accident, he sustained compound and communited fracture in right hand elbow, in wrist and palm, severe injury in the right forehead and the right eye, leading to the concoction in brain and blurred eye vision. He has further deposed that he sustained injury in right hand, which became completely useless, besides multiple internal and external injuries and major degloving injury. He was treated as inpatient in National Hospital, Chennai for 22.02.1996 and on the same day, a surgery was performed. The claimant has further deposed that he was discharged on 11.03.1996. Thereafter, he was treated as inpatient for one month in Government Stanley Hospital and during this period, plates were fixed to fuse the fractured bones. Again he was treated in the same hospital between 18.03.1996 and 29.03.1996. It is evident from Ex.P2, Discharge summary that there is a fracture of right radius with degloving injury. Skin grafting was also done under general Anesthesia. It is evident from Ex.P3, Discharge summary that the claimant was admitted on 26.04.1996 and bone grafting was done under General Anesthesia during the period of treatment. He was discharged on 30.04.1996. Medical records produced by the claimant prove that the claimant was hospitalised for 36 days in three different spells mentioned above.

18. The claimant has further deposed that he had taken treatment as outpatient for nearly two months. To support his contention, he has not produced any medical records. In so far medical expenses incurred by him are concerned, the claimant has produced the bills only for Rs.65,127/-. According to him, he has studied upto Plus two and applied for B.B.A., Correspondance course. Due to the injury, he could not bend his right hand and there is disfiguration. He has further deposed that he has lost his marriage prospects.

19. PW.2, Doctor who examined the respondent/claimant with reference to medical records found that there is disfiguration of right hand, for which, he assessed the disability at 20%. He has deposed that the claimant could not bend his fingers and there is difficulty in using his right hand, for which, he assessed the disability at 50%. For the disfiguration in the forehead, he assessed the disability at 5%. Taking into consideration, the functional disability due to the injuries at different parts of the body and the consequential disability to the limb or joint and disfiguration, PW.2, Doctor has assessed the disability at 75% and

issued Ex.P7, Disability certificate. On the basis of Ex.P7, the Tribunal has awarded Rs.75,000/- as disability compensation.

20. Placing reliance on the following decisions:

1. 1988 ACJ 24 [Ramu Tolaram v. Amichand Hansraj Gupta]
2. 2003 ACJ 1444 [New India Assurance Co. Ltd. v. K.Kartheeswaran]

3. 2003 ACJ 1210 [S.Achuthan v. M.Gopal]

learned counsel for the claimant submitted that the compensation for pain and suffering and other heads are inadequate and the same requires enhancement.

21. In 1998 ACJ 24 (Supra), the Bombay High Court, considered that the pain and suffering of a rich man is not more acute than the pain and suffering of a poor, "Riff-Raff". There is no quarrel over the principle. The compensation for pain and suffering depends upon the nature of injuries, period of hospitalisation, nature of treatment, etc. For example, an injured person undergoing dialysis or a person with a head injury resulting in recurrent epilepsy or a person with broken ribs suffering from breathing problem cannot be equated with a person who sustains a simple fracture in thigh or ulna bone. If the fracture is communited or complex and it requires surgery or longer treatment or results in amputation, then suitable compensation has to be awarded. Therefore, there cannot be any universal formula in awarding compensation and each case has to be decided on its own merits. Therefore, what has to be considered is whether there is just and reasonable compensation under the head pain and suffering.

22. In 2003 ACJ 1444 (supra), the claimant was a student of Class IX and he had sustained injuries in leg, shoulder and elbow. There was amputation of right leg above knee and no artificial limb could be fixed. There was restriction of movement due to the shoulder injury and due to that, he could not even use crutches. He had undergone a half-a-dozen surgeries including skin grafting and hospitalised for several months due to head injury. Considering the gravity of injuries and prolonged treatment, the Tribunal awarded Rs.1 lakh for pain and suffering, inclusive of compensation in other heads.

23. In 2003 ACJ 1210 (supra), an Advocate suffered a compound fracture of left tibia and tibula, closed fracture shaft of left femur, fracture of seventh and eighth ribs on his left side, was hospitalised for over six months and treated as out-patient for more than 15 months, had undergone more than 10 surgeries and

suffered reneral failure and dialysis on six occasions, awarded compensation under various heads. He was a practising advocate with four years standing and became unfit to continue his profession. Considering the medical expenses incurred by him and the pain and suffering, the High Court awarded substantial compensation. The judgments cited by the learned counsel for the claimant do not apply to the facts of the present case, for the reason that the nature of injuries, period of treatment and operations undergone are entirely different.

24. In the instant case, the Tribunal has awarded compensation of Rs.5,000/- for pain and suffering and the loss of income to the family members of the claimant. The claimant had been treated as inpatient for three different spells for a period of 36 days. All the three occasions, he had undergone surgeries. Considering the nature of injuries and the period of treatment and the post operative period of six months, it would be appropriate to award an additional compensation of Rs.25,000/- for pain and suffering.

25. The Tribunal has awarded Rs.1,000/- for transportation charges. It is evident that he had been attending to the hospital as outpatient for the considerable period. The award of Rs.1,000/- is inadequate and the same is enhanced to Rs.5,000/-. Similarly, the claimant has sought compensation for extra nourishment. Three surgeries have been performed and therefore, it could be reasonably presumed that he would have taken extra nourishment during the post operative period and thereafter, for the speedy recovery. Therefore, it would be appropriate to award compensation of Rs.5,000/- for extra nourishment, in addition to Rs.1,500/-.

26. The Tribunal has awarded compensation of Rs.1,00,000/- towards medical expenses, for which, the claimant has produced Ex.P4 series for Rs.65,127.88 only. The claimant has deposed that he has lost few medical bills and not obtained some bills from the medical shop. It is settled law that the injured is entitled to compensation for the actual medical expenses incurred by him, which are supported by bills. In the instant case, a sum of Rs.65,127.88 is supported by medical bills and therefore, the claimant is entitled to the compensation of Rs.65,127.88 for medical expenses, which is rounded off to Rs.65,128/-.

27. The claimant was aged about 22 years at the time of accident. It is evident from Ex.P5 that he has joined B.B.A., course through correspondence. Medical records prove that the claimant has lost his earning capacity and the Tribunal applying structured formula and awarded compensation of Rs.2,00,000/- towards loss of future earning and the said award is confirmed.

28. In Cholan Roadways Corporation Ltd., Kumbakonnam vs. Ahmed Thambi and others, reported in 2006 (4) CTC 433, Full Bench

of this Court has held that when the injured is compensated for both loss of earning and loss of earning capacity under the non-pecuniary head, the permanent disability need not be separately itemised. Therefore following the above judgment, compensation of Rs.75,000/- as against 75% disability is liable to be set aside and the same is deducted from the total award.

29. The evidence of the claimant is supported by the testimony of PW.2, Doctor that the claimant cannot use his right hand. Even in the vakalat filed along with the claim petition, the claimant has fixed his thumb impression only, which proves his incapacity to put his signature. Therefore, it is clear that he has lost his amenities. This Court deems it fit to award compensation of Rs.25,000/- for loss of amenities. Rs.6,000/- awarded by the Tribunal for loss of earning is sustained.

30. Though the claimant has sustained an injury in the right hand and lost his earning capacity that would not by itself shorter the life span and there cannot be any loss of expectation of life and therefore the compensation of Rs.1,25,000/- under the head loss of expectation of life is liable to be deducted.

31. A person not only suffers injury on account of the accident, but also suffers in mind and body throughout his life on account of the accident. A feeling will be developed in his mind that he lost something in life, which leads to depression in life. The claimant, who has suffered 75% disability and lost his earning capacity will have the agony and unhappiness that he cannot be like a normal person for the rest of his life. Therefore, it would be appropriate to award Rs.25,000/- for mental agony.

32. Learned counsel for the claimant, placing reliance on the decision in National Insurance Co. Ltd. v. Swaroopa & Others [AIR 2006 S.C. 2472], submitted that the interest awarded need not be altered. In the said decision, the accident had occurred in the year 1988 and the claim was made in the year 1993. Considering the fact that the litigation took nearly 17 years after the accident, the Apex Court declined to interfere with the rate of interest. In the instant case, the accident had occurred in the year 1996 and the award was passed in 2000. Therefore, the said judgment is not applicable to the facts of this case. Therefore, the interest is reduced to 9% per annum.

33. In the result, the claimant is entitled to the compensation of Rs.3,62,628/- with interest at the rate of 9% per annum from the date of claim, till the date of realisation. The apportionment of the award is detailed hereunder.

Transportation charges	: Rs.	5,000/-
Extra nourishment	: Rs.	6,500/-

	Medical expenses	: Rs. 65,128/-
	Pain and suffering	: Rs. 30,000/-
	Loss of earning	: Rs. 6,000/-
	Loss of earning capacity	: Rs. 2,00,000/-
``	Loss of amenities	: Rs. 25,000/-
	Mental agony	: Rs. 25,000/-
		Rs.3,62,628/-

The Tribunal is directed to refund the balance amount to the Transport Corporation with the proportionate accrued interest within two months from the date of receipt of a copy of this order.

34. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Conseqently the appeal filed by the claimant is dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Motor Accidents Claims Tribunal,
(IV Judge, Court of Small Causes), Chennai.

2. The Record Keeper,
VR Section, High Court, Madras.
(Records if any)

+ 1 cc to Mr. M. Swamikkannu, Advocate, SR No.16862
+ 1 cc to Mr. B. Ramachandran, Advocate, SR No.16887

MBS(CO)
SR/17.4.2007

Judgment in
C.M.A.Nos.138 and 175 of 2001